

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN SENATE JANUARY 5, 2004

SENATE BILL

No. 391

Introduced by ~~Senator Escutia~~ Senators Florez and Escutia

February 20, 2003

~~An act to amend Section 12654 of the Government Code, relating to state actions. An act to add Chapter 3.5 (commencing with Section 105230) to Part 5 of Division 103 of the Health and Safety Code, relating to public health, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, ~~Escutia-Florez. False claims actions~~
Pesticide drift exposure.

Existing law establishes reporting requirements relating to pesticide poisoning, and requires the Office of Environmental Health Hazard Assessment to develop and implement a program to alert physicians and others regarding symptoms, diagnosis, and treatment.

This bill would establish the Pesticide Drift Exposure Prevention and Response Act to be administered by the office for the purposes of providing education and training and reimbursement to health care providers for the costs associated with illnesses or conditions related to exposure to pesticide drift.

This bill would require the office to develop related educational materials for the public and to develop instructional materials and training for health care providers and emergency medical services personnel. This bill would require the office to establish protocols for these purposes and would require county health officers to develop or amend the emergency response plans to conform to the protocols. By

requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.

This bill would require the office to establish, assess, and collect a fee to the manufacturers and wholesalers of pesticides and would deposit the proceeds into the fund and would continuously appropriate the fund to the office to provide reimbursement of health care costs of persons exposed to nonoccupational pesticide drift exposure and for state and local agency costs associated with this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would appropriate moneys from the Pesticide Drift Exposure Prevention and Response Fund to the office for reimbursement of local agency costs associated with this bill.

With regard to other nonreimbursed mandates, if any, this bill would provide that, if the Commission on State Mandates determines that the bill contains other nonreimbursed costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law authorizes the Attorney General to bring a civil action for false claims made against a state or political subdivision if any portion of the money, property, or services issued from or was provided by the state, subject to specified requirements. Existing law prohibits such a civil action from being filed more than 3 years after discovery by the public official charged with responsibility to act in the circumstances or no more than 10 years after the date of the violation.~~

~~This bill would specify that such a civil action may allege Doe defendants that remain unnamed more than 3 years after the date of discovery if they are named within 10 years of the date the violation was committed.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. — ~~Section 12654 of the Government Code is~~
2

1 SECTION 1. Chapter 3.5 (commencing with Section 105230)
2 is added to Part 5 of Division 103 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 3.5. PESTICIDE DRIFT EXPOSURE PREVENTION AND
6 RESPONSE
7

8 105230. (a) This chapter shall be known, and may be cited,
9 as the Pesticide Drift Exposure Prevention and Response Act.

10 (b) The Legislature finds and declares all of the following:

11 (1) In prior years pesticide laws and regulations including use
12 restrictions, pesticide posting requirements, buffer zones, and oral
13 notifications have not adequately prevented all pesticide drift
14 exposures.

15 (2) Unfortunately, large scale pesticide exposures on and off of
16 the agricultural fields have continued to take place, primarily from
17 natural offsite airborne movement or “drift” of pesticides.

18 (3) Pesticide drift incidents have repeatedly been inadequately
19 handled by emergency response personnel and health care
20 providers and inappropriate treatment of the victims of exposure
21 has resulted.

22 (4) Lack of coordination among county and state agencies,
23 little training in diagnosis and treatment of illness or conditions
24 resulting from pesticide drift exposure, and lack of related funding
25 have all contributed to the problem.

26 (5) The purpose of this chapter is to ensure that the victims of
27 pesticide drift exposure receive immediate, comprehensive, and
28 respectful attention during and following pesticide drift exposure
29 incidents.

30 (c) For the purposes of this chapter:

31 (1) “Office” means the Office of Environmental Health Hazard
32 Assessment.

33 (2) “Department” means the Department of Pesticide
34 Regulation.

35 (3) “Pesticide drift” means the physical movement of pesticide
36 droplets, particles, or gas-phase chemicals away from the
37 application site during and after a pesticide application.
38 “Pesticide drift” includes spray droplets created during a
39 pesticide application, gas-phase chemicals from fumigant

1 applications or volatilization of applied pesticides, airborne dusts
2 or powders, and pesticide-contaminated dust particles.

3 (4) “A person exposed to pesticide drift” means a person who
4 meets all of the following criteria:

5 (A) The person was within a one-mile radius of a pesticide drift
6 incident during the pesticide drift incident, or within a reasonable
7 time after the incident.

8 (B) The exposure was a nonoccupational exposure, and the
9 person has an illness or condition that was caused or likely caused
10 by the nonoccupational exposure to pesticide drift.

11 (5) “Nonoccupational” means that the person exposed to the
12 pesticide drift was not at the time of the exposure engaged in
13 application of the pesticide or employed performing work in the
14 fields or on the property upon which the pesticide was applied.

15 (6) “Fund” means the Pesticide Drift Exposure Prevention and
16 Response Fund established pursuant to Section 105237.

17 (7) “Medical Reimbursement Account” means the Medical
18 Reimbursement Account established within the fund pursuant to
19 paragraph (1) of subdivision (d) of Section 105237.

20 (8) “Education and Administration Account” means the
21 Education and Administration Account established within the
22 fund pursuant to paragraph (2) of subdivision (d) of Section
23 105237.

24 105231. (a) The office shall administer this chapter.

25 (b) The office shall, in conjunction with the department and the
26 State Department of Health Services, shall by July 1, 2005, adopt
27 regulations to coordinate a process for reimbursement of local
28 emergency medical services response costs and health care
29 provider costs, including, but not limited to, adoption of a specific
30 reimbursement schedule.

31 (c) The reimbursement schedule shall set forth a procedure and
32 reimbursement rates to reimburse local emergency medical
33 services providers and health care providers for their costs of
34 providing any of the following services for any illness or condition
35 of a person exposed to pesticide drift:

36 (1) Emergency medical services, including, but not limited to,
37 transportation services.

38 (2) Medical evaluation and diagnosis.

39 (3) Immediate and ongoing treatment for conditions related to
40 the pesticide drift exposure.

1 105232. (a) The office shall develop and implement, in
2 cooperation with local health officers and state and local medical
3 associations, a program of medical education to alert physicians
4 and surgeons, interpreters, and other health care professionals to
5 the symptoms, diagnosis, treatment, and reporting of pesticide
6 poisoning arising from pesticide drift exposure.

7 (b) The office shall consult with the Emergency Medical
8 Services Authority regarding the adequacy of emergency services
9 personnel training and shall conduct annual training in the 15
10 counties where soil fumigant use is the highest in all of the
11 following areas:

12 (1) The effects of, and the recognition of acute and chronic
13 health symptoms of, pesticide drift exposure.

14 (2) The proper treatment of pesticide drift exposure with an
15 emphasis on soil fumigants.

16 (3) Pesticide drift exposure reporting requirements and
17 procedures.

18 (4) Processes available for the reimbursement of the costs of
19 medical treatment related to pesticide drift exposure.

20 (5) The inclusion of a cultural competency component.

21 (6) Awareness of the pesticide drift exposure component of the
22 local hazardous response plans.

23 105233. (a) The office, the department, and the State
24 Department of Health Services shall jointly develop and distribute
25 educational materials for the public and for health care personnel
26 explaining symptoms and treatment of illnesses or conditions
27 related to pesticide drift exposure for each of the 10 pesticides that
28 present the greatest pesticide drift problem and each soil fumigant
29 used in California. The pesticide information shall be in a form
30 that is both understandable by, and accessible to, the intended
31 recipients.

32 (b) The office shall allocate funds, in the form of grants or
33 contracts, to eligible state and local agencies, educational
34 institutions, and nonprofit corporations to defray the cost of
35 providing pesticide drift exposure training for emergency medical
36 personnel, including, but not limited to, instructional supplies and
37 trainee expense reimbursement.

38 (c) The office and the relevant state licensing agencies shall
39 cooperate to establish continuing medical education courses and

1 *related training materials for physicians and surgeons and nurses*
2 *regarding pesticide drift exposure.*

3 *105234. (a) The office with the advice and assistance of*
4 *county agricultural commissioners, local health officers, and*
5 *directly affected community members, shall by August 31, 2005,*
6 *adopt emergency regulations establishing protocols for purposes*
7 *of this chapter.*

8 *(b) The protocols shall include, but not be limited to, all of the*
9 *following:*

10 *(1) Protocols for establishing a pesticide application registry*
11 *to serve as a clearinghouse for information regarding the date,*
12 *time, pesticide, type of application, and specific location of*
13 *application.*

14 *(2) Protocols for immediately obtaining information from the*
15 *pesticide application registry regarding pesticide applications in*
16 *the vicinity of any health complaints or requests for treatment*
17 *which may indicate the occurrence of a pesticide drift exposure*
18 *incident.*

19 *(3) Protocols for emergency response to pesticide drift*
20 *exposure, including, but not limited to, procedures to provide*
21 *immediate access to pesticide-specific information necessary to*
22 *assist emergency medical services personnel.*

23 *(4) Protocols to delineate specific agency responsibilities and*
24 *the process for responding to calls, notifying residents, and*
25 *coordinating evacuation, if needed.*

26 *(5) Protocols to establish emergency shelter procedures and*
27 *locations to be used in the event evacuation is needed.*

28 *(6) Protocols to access services in all languages known to be*
29 *spoken in the affected area in accordance with Section 11135 of the*
30 *Government Code.*

31 *(7) Protocols to ensure access to health care within 24 hours of*
32 *the exposure and up to a week after the exposure.*

33 *(c) County health officers shall develop or amend the local*
34 *hazardous materials response plans to specifically address*
35 *pesticide drift exposure and to incorporate provisions conforming*
36 *the plans to the protocols.*

37 *(d) By June 1, 2006, all counties shall submit tentative plans for*
38 *compliance with this chapter to the office for approval of the*
39 *pesticide drift component.*

1 (e) By January 1, 2007, all counties shall implement the
2 approved pesticide drift component of their emergency response
3 plans pursuant to this chapter.

4 105235. (a) As a prelude to the statewide implementation of
5 the pesticide application registry protocols, the office and the
6 department in conjunction with county agricultural
7 commissioners shall establish a pesticide application public
8 accessibility pilot program of online posting of notices of intent
9 and notices of completion for fumigant applications.

10 (b) The accessibility pilot shall be accessible to the department,
11 the commissioners, county environmental health, and emergency
12 medical personnel and the general public with some mapping
13 capacity to enable agencies to determine if any fumigant
14 applications are located within several miles of a complaint of
15 illness, odor, or other indicators of pesticide drift.

16 (c) The accessibility pilot shall include an Internet site and a
17 24-hour accessible telephone hotline for contacting the applicator
18 listed on the notice of intent.

19 (d) The accessibility pilot shall take place in the top 15 counties
20 with highest use of soil fumigants.

21 (e) The department shall implement the accessibility pilot by
22 September 1, 2005.

23 105236. (a) There is hereby imposed a fee on the first point
24 of sale on all of the following:

25 (1) Manufacturers and other persons who directly produce any
26 pesticide for application in this state.

27 (2) Any business or person who is in nonretail business and who
28 distributes within this state any pesticide for application in this
29 state.

30 (b) The office in consultation with the department shall, by
31 regulation, establish an appropriate fee schedule to be assessed on
32 manufacturers and distributors.

33 (c) The program implemented pursuant to this chapter shall be
34 fully supported from the fees collected pursuant to this chapter.
35 Notwithstanding the scope of activity mandated by this chapter, in
36 no event shall this chapter be interpreted to require services
37 necessitating expenditures in any fiscal year in excess of the fees,
38 and earnings therefrom, collected pursuant to this chapter. Except
39 for startup activities initially funded from loans as set forth in
40 Section 105239, this chapter shall be implemented only to the

1 extent that fee revenues are available for expenditure for purposes
2 of this chapter. The office shall not spend more than it collects from
3 the fees and the earnings in implementing this chapter including
4 repayment of startup loans.

5 (d) To the maximum extent practicable, the fees shall be
6 assessed on the basis of a pesticide's present responsibility for the
7 toxic effects of pesticide drift exposure.

8 (e) No fee shall be assessed upon any retailer of pesticides.

9 (f) The office may collect the fees imposed pursuant to this
10 chapter or may contract with the State Board of Equalization or
11 another state department or agency for collection of fees due under
12 this chapter.

13 (g) The annual fee assessment shall be adjusted by the office to
14 reflect the increase in the annual average of the California
15 Consumer Price Index, as recorded by the Department of
16 Industrial Relations, for the most recent year available.

17 (h) No fee shall be assessed upon a party if that party
18 demonstrates to the office's satisfaction that the party merits an
19 exemption from this chapter because the party's conduct did not
20 contribute in any manner to the toxic effects of pesticide drift
21 exposure.

22 (i) The office shall not collect fees pursuant to this chapter in
23 excess of the amount reasonably anticipated by the office to fully
24 implement this chapter. In no fiscal year shall the office collect
25 more than _____ dollars (\$_____) in fees, as adjusted pursuant to
26 subdivision (g).

27 (j) The office shall conduct a review every three years,
28 beginning January 1, 2008, to determine the appropriate levels for
29 assessing the fee pursuant to this chapter.

30 105237. (a) The Pesticide Drift Exposure Prevention and
31 Response Fund is hereby established within the State Treasury.

32 (b) All fees collected pursuant to this chapter shall be deposited
33 into the fund as set forth in subdivision (d). All interest earned on
34 the moneys that have been deposited into the fund shall be retained
35 in the fund and credited to the appropriate account as set forth in
36 subdivision (d).

37 (c) Notwithstanding Section 13340 of the Government Code,
38 all moneys in the fund are hereby continuously appropriated to the
39 office exclusively for the purposes of this chapter as set forth in
40 subdivision (d).

1 (d) (1) The Medical Reimbursement Account is hereby
2 established within the fund. From all fees collected pursuant to this
3 chapter, an amount necessary to fully reimburse all claims for
4 emergency response and health care provider services under
5 Section 105231 as determined by the office shall be deposited
6 annually into the Medical Reimbursement Account, but not less
7 than ____ percent of the total fees collected annually pursuant to
8 this chapter. All funds in the Medical Reimbursement Account are
9 to be used exclusively for the costs set forth in this paragraph.

10 (2) The Education and Administration Account is hereby
11 established within the fund. From all fees collected pursuant to this
12 chapter, an amount necessary to fully reimburse all state and local
13 agencies from public education and health care provider
14 education and training activities and other program,
15 administrative, and compliance costs under this chapter,
16 including, but not limited to, reimbursement of state agency costs
17 and state-mandated local costs pursuant to Section 105238, shall
18 be deposited annually into the Education and Administration
19 Account, but not less than ____ percent of the total fees collected
20 annually pursuant to this chapter. All funds in the Education and
21 Administration Account are to be used exclusively for the costs set
22 forth in this paragraph.

23 105238. The office shall enter into interagency agreements
24 with the department, the agency, the State Department of Health
25 Services, and the Emergency Medical Services Authority to
26 annually pay those agencies, from moneys within the fund, their
27 share of the state costs of administering this chapter, and shall
28 enter into reimbursement agreements with local agencies to
29 annually reimburse those agencies, from moneys within the fund,
30 for their state-mandated local costs of administering and
31 complying with this chapter.

32 105239. (a) (1) It is the intent of the Legislature, in
33 subsequent legislation, to appropriate to the Controller from the
34 General Fund the sum of ____ dollars (\$____) for deposit into the
35 Education and Administration Account within the fund for
36 allocation as a loan, to the office for the purposes of adopting
37 regulations to establish the fee schedule authorized by this chapter
38 and for startup costs related to implementing this chapter.

1 (2) *It is the intent of the Legislature that the office fully repay*
2 *the amount of this loan with interest at the pooled money*
3 *investment rate, from fees collected pursuant to this chapter.*

4 (b) *It is the intent of the Legislature, in subsequent legislation,*
5 *to establish penalties related to violation of this chapter, and to*
6 *apply the proceeds to replenish the Medical Reimbursement*
7 *Account.*

8 105240. *The adoption, amendment, or repeal of a regulation*
9 *for implementing this chapter, including, but not limited to, fee*
10 *assessment and collection, and subsequent amendments or*
11 *adjustments authorized by this chapter, are hereby deemed to be*
12 *emergency regulations necessary for the immediate preservation*
13 *of the public peace, health, and safety or general welfare.*
14 *Regulations adopted, amended, or repealed pursuant to this*
15 *chapter are hereby exempted from the rulemaking provisions of the*
16 *Administrative Procedure Act (Chapter 3.5 (commencing with*
17 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
18 *Code). However, upon adoption, the regulation, amendment, or*
19 *repeal shall be filed with the Secretary of State and printed in the*
20 *California Code of Regulations.*

21 SEC. 2. *Notwithstanding Part 7 (commencing with Section*
22 *17500) of Division 4 of Title 2 of the Government Code,*
23 *reimbursement of local costs mandated by this act shall be made*
24 *by the Office of Environmental Health Hazard Assessment from*
25 *funds in the Education and Administration Account within the*
26 *Pesticide Drift Exposure Prevention and Response Fund, pursuant*
27 *to reimbursement agreements entered into with local agencies,*
28 *under Chapter 3.5 (commencing with Section 10523) of Part 5 of*
29 *Division 103 of the Health and Safety Code.*

30 *However, notwithstanding Part 7 (commencing with Section*
31 *17500) of Division 4 of Title 2 of the Government Code, if the*
32 *Commission on State Mandates determines that this act contains*
33 *other nonreimbursed costs mandated by the state, reimbursement*
34 *to local agencies and school districts for those costs shall be made*
35 *pursuant to Part 7 (commencing with Section 17500) of Division*
36 *4 of Title 2 of the Government Code. If the statewide cost of the*
37 *claim for reimbursement does not exceed one million dollars*
38 *(\$1,000,000), reimbursement shall be made from the State*
39 *Mandates Claims Fund.*

40 ~~amended to read:~~

1 ~~12654. (a) (1) A civil action under Section 12652 may not be~~
2 ~~filed more than three years after the date of discovery by the~~
3 ~~official of the state or political subdivision charged with~~
4 ~~responsibility to act in the circumstances or, in any event, no more~~
5 ~~than 10 years after the date on which the violation of Section 12651~~
6 ~~is committed.~~

7 ~~(2) A civil action filed under paragraph (1) may allege “Doe”~~
8 ~~defendants that remain unnamed more than three years after the~~
9 ~~date of discovery of the violation, if the defendants are named~~
10 ~~within 10 years of the date on which the violation of Section 12651~~
11 ~~is committed.~~

12 ~~(b) A civil action under Section 12652 may be brought for~~
13 ~~activity prior to January 1, 1988, if the limitations period set in~~
14 ~~subdivision (a) has not lapsed.~~

15 ~~(c) In any action brought under Section 12652, the state, the~~
16 ~~political subdivision, or the qui tam plaintiff shall be required to~~
17 ~~prove all essential elements of the cause of action, including~~
18 ~~damages, by a preponderance of the evidence.~~

19 ~~(d) Notwithstanding any other provision of law, a guilty verdict~~
20 ~~rendered in a criminal proceeding charging false statements or~~
21 ~~fraud, whether upon a verdict after trial or upon a plea of guilty or~~
22 ~~nolo contendere, except for a plea of nolo contendere made prior~~
23 ~~to January 1, 1988, shall estop the defendant from denying the~~
24 ~~essential elements of the offense in any action which involves the~~
25 ~~same transaction as in the criminal proceeding and which is~~
26 ~~brought under subdivision (a), (b), or (c) of Section 12652.~~

27 ~~(e) Subdivision (b) of Section 47 of the Civil Code shall not be~~
28 ~~applicable to any claim subject to this article.~~